



ENVIRONMENTAL PROTECTION AGENCY

6560-50-P

40 CFR Part 52

[EPA-R02-OAR-2013-0192; FRL-9929-11-Region 2]

Approval and Promulgation of Implementation Plans; Revision to the New York State Implementation Plan for Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State Implementation Plan revision (SIP) submitted by the New York State Department of Environmental Conservation. This revision consists of a change to New York's November 15, 1992 Carbon Monoxide Attainment Demonstration that would remove a reference to a limited off-street parking program as it relates to the New York County portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT Carbon Monoxide attainment area. The EPA is approving this SIP revision because it will not interfere with attainment or maintenance of the national ambient air quality standards (NAAQS) in the affected area or with any other applicable requirement of the Clean Air Act (CAA) and is consistent with EPA rules and guidance.

DATES: This rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2013-0192. All documents in the docket are listed in the <http://www.regulations.gov> web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007-1866. This Docket Facility is open from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212-637-4249.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning this final action, please contact Henry Feingersh, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, telephone number (212) 637-3382, fax number (212) 637-3901, email feingersh.henry@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What Action Is The EPA Taking?

The New York State Department of Environmental Conservation submitted a State Implementation Plan (SIP) revision request to remove a reference from the carbon monoxide (CO) SIP to a limited off-street parking program that only applied in the Manhattan Central Business District of New York City (CBD). The program limits the number of parking spaces

permitted in newly constructed buildings. The EPA is approving New York's request to remove a reference to this limited off-street parking program in New York County because this SIP revision will not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) toward attainment and maintenance of any NAAQS or with any other applicable requirement of the CAA. The EPA has reviewed all the public comments and agrees with the State and City of New York that there is no evidence that removal from the SIP will interfere with attainment or maintenance of the NAAQS in the area or with any other CAA applicable requirement. In addition, New York, in its SIP modeling to support the previously EPA-approved demonstrations of attainment of the various NAAQS, did not take credit for any emission reductions that may be attributed to the limited off-street parking program measures. After removal from the federal SIP, the limited off-street parking program, which is implemented by the New York City Department of City Planning and subject to New York City administrative procedures will no longer be federally enforceable. Removal of the limited off-street parking program from the SIP will not change the program's status under local law.

II. What Comments Did The EPA Receive On The Proposal And What Are The EPA's Responses?

Our April 12, 2013 proposed approval of the SIP provided for a public comment period that ran from April 12 through May 13, 2013. We received comments from the City of New York Law Department and from Mr. Daniel Gutman, some of which were timely. The City of New York Law Department submitted a letter dated May 13, 2013. Mr. Gutman provided several comments to the EPA: a May 13, 2013 letter, a June 7, 2013 electronic mail message, a June 11, 2013 electronic mail message and a July 26, 2013 letter. All comments, even those from Mr.

Gutman that were received after the close of the public comment period, are included in the docket for this action. Although we are not required to respond to Mr. Gutman's late-submitted comments, we are electing to do so in this final action.

In general, the City of New York supports the EPA's proposed rule to approve New York's SIP request to remove a reference to a limited off-street parking program as it relates to the New York County portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT CO attainment area. Mr. Gutman commented that the EPA should deny New York State's request to revise the SIP and not approve removal of the limited off-street parking program reference in the SIP.

A summary of the comments and the EPA's responses are provided below. Comments from the City of New York Law Department are referred to as "the City of New York" and comments from Mr. Daniel Gutman are referred to as "Mr. Gutman."

Comment: Mr. Gutman stated that the limited off-street parking program, with a decline of 20,000 public parking spaces, has been effective in reducing automobile vehicle miles traveled (VMT) and improving auto and truck vehicle speeds in the Manhattan CBD, contributing to the ability of New York to meet ozone and fine particle (PM_{2.5}) NAAQS.

Response: The EPA disagrees that Mr. Gutman has presented a clear relationship between the limited off-street parking restrictions and the ability of New York City to meet the ozone and PM_{2.5} NAAQS. While Mr. Gutman cited documents asserting the limited off-street parking has

been reduced, and vehicle speeds have improved, he has not cited evidence that either, or both, of those events correlate with the downward trend of CO concentrations. Mr. Gutman has not provided any information that quantifies the emission reductions he asserts have been produced or the emission increases that he asserts would be produced by removal of the program, or that indicates that the removal of the program will interfere with maintenance of the NAAQS. The EPA's overall conclusion, as explained by Figures 1-3 and the narrative addressing emission factors, average speeds and VMT, is that motor vehicle emissions are going down; any increase in VMT is outweighed by the decrease in motor vehicle emission rates.

Based on the EPA's review of the "1981 Parking Study," submitted by Mr. Gutman along with his comments, the Study found that the number of parking spaces was not a limiting factor for drivers deciding to drive into the CBD. The 1981 Parking Study found "[p]olicies based on changing auto trip cost and travel time may be ineffective in reducing auto trips since most of the variations in trip decisions are due to factors other than trip time and cost." (1981 Parking Study p. i). It also found that "the air quality impact of economically based parking management strategies is minimal." (1981 Parking Study p. i). Furthermore, "during the peak commuter entry hours there is no area of the CBD where lack of available off-street parking serves to limit auto entries." (1981 Parking Study p. ii). EPA is aware of another study¹ which concludes that Boston's cap on off-street parking has contributed to the excess VMT from people "cruising" for on-street parking spaces. Therefore, the amount of VMT generated due to travel into cities is a complex function of many variables that includes the relationship between off-street and on-street parking. In this situation, the impact of removing the reference to the limited off-street parking program on the precursors to ozone and PM_{2.5} resulting from motor vehicles is so small

1 "Cruising for parking," Donald C. Shoup, (Transport Policy 13 (2006), pages 479-486).

as to not be meaningful and, most important, New York in its SIP modeling to support the previously EPA-approved demonstrations of attainment of the various NAAQS, did not take credit for any emission reductions that may be attributed to the limited off-street parking program measures.

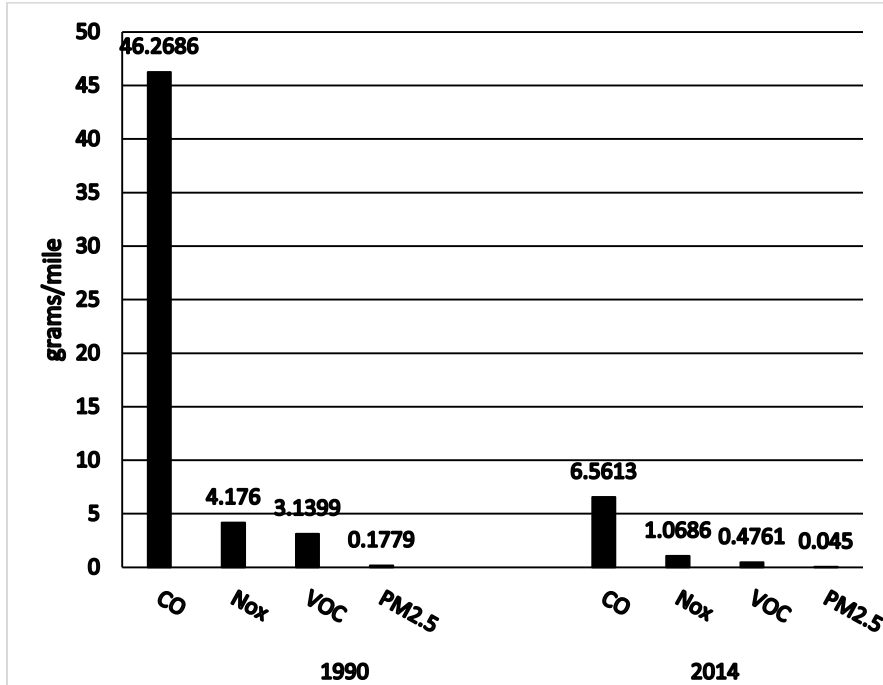
No evidence was provided that a growth in the number of parking spaces in the CBD of New York City will lead to renewed growth of traffic, lower traffic speeds and/or higher emissions than assumed in New York's ozone and PM_{2.5} attainment demonstrations. The EPA therefore disagrees that it should be assumed there is a direct correlation between growth in the number of parking spaces in the City of New York and its impact on any baseline assumptions associated with New York's attainment demonstrations to date.

In evaluating removal of the reference to the parking restrictions, the EPA considered New York's SIP revision request to address all criteria air pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. Regarding the air quality aspects of motor vehicle emissions and parking restrictions, increased emissions, if any, from additional motor vehicles in an area would be primarily CO compared to other criteria pollutants in the Manhattan CBD. Therefore, of all the criteria pollutants, CO concentrations would be the pollutant most sensitive to factors associated with the impact from changes to the existing limited off-street parking program that limits the number of parking spaces in permitted new construction.

As presented in our April 12, 2013 proposed rule, CO concentrations in the New York Metropolitan Area have not violated the NAAQS or come close to exceeding the NAAQS since 1992 and have trended downward since that year. Currently, measured CO concentrations show values of approximately 20 percent of the NAAQS. Also, as stated in the April 12, 2013, proposed rule, “This dramatic improvement can be attributed to the Federal Motor Vehicle Control Program along with advanced anti-pollution controls on motor vehicles.” 78 FR 21867, 21869.

A comparison of vehicle emission factors between 1990 and 2014 calculated using EPA’s mobile source model, MOVES, shows how the rate of mobile emissions have been reduced. In addition, it also shows how the other pollutants of interest, including ozone and PM_{2.5}, referenced by Mr. Gutman are emitted at levels significantly lower than CO (See Figure 1). The emission factors for 1990 and 2014 were calculated using default values for New York County (including default VMT). These are annual factors combining all vehicle types and road types.

Figure 1. New York County Emission Factors

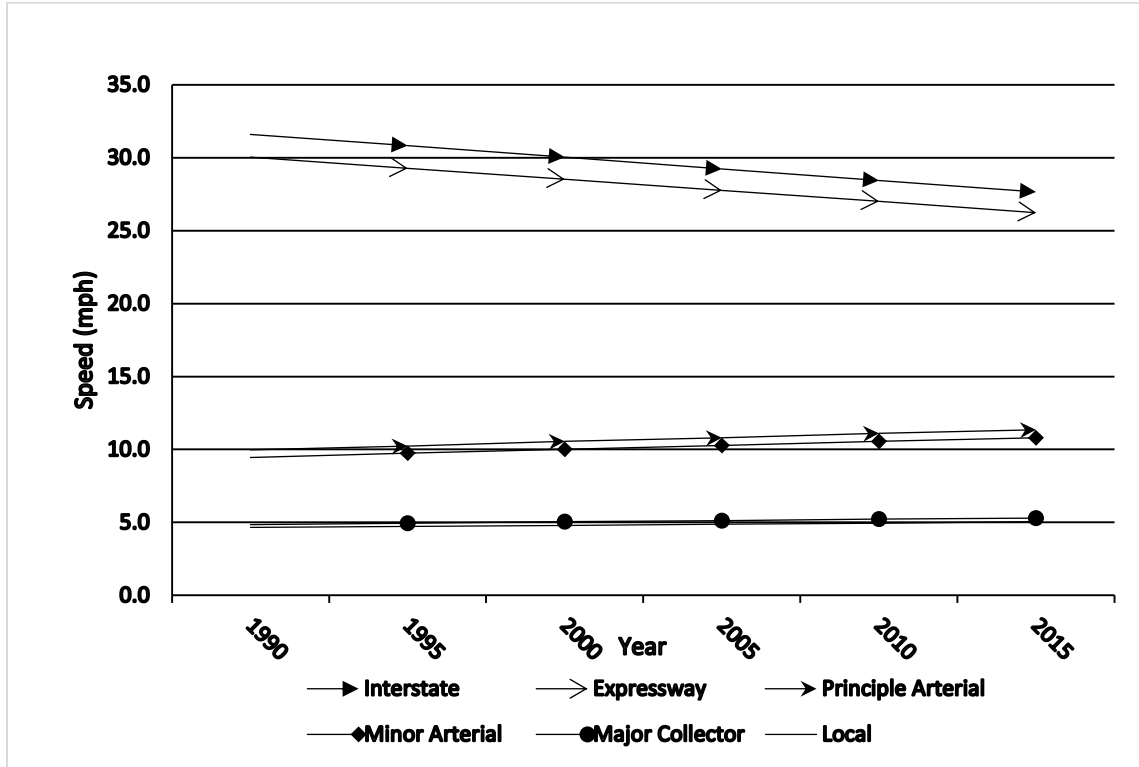


Source: USEPA Motor Vehicle Emission Simulator (MOVES) Model.

Reviewing the data submitted as part of the CO maintenance plan for the New York Metropolitan Area² figure 2, below, shows the average daily speeds used in modeling. Vehicle speeds have decreased slightly on highways and increased slightly or remained constant, from 1990 to the present, on local, major collector, minor arterial and principle arterial roadways while monitored CO values have decreased significantly to the levels observed in 2013. The New York-Northern New Jersey-Long Island, NY-NJ-CT CO attainment area, which includes the Manhattan CBD, is meeting the NAAQS.

² New York Metropolitan Area Carbon Monoxide Limited Maintenance Plan For 2012 – 2022, dated December 2012, Appendix C, Attachment 4 Speed Tables.

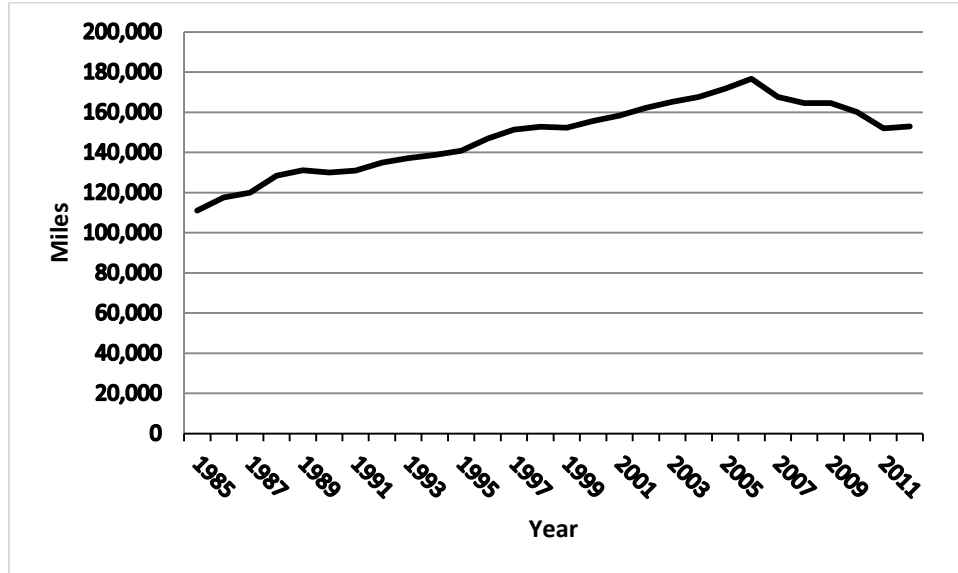
Figure 2. Average Speeds used in Manhattan Modeling



Source: New York Metropolitan Area Carbon Monoxide Limited Maintenance Plan For 2012 – 2022, Appendix C, Attachment 4, dated December 2012.

Based on traffic data from the New York State Department of Transportation, VMT increased from 1985 to 2006 and declined slightly from 2006 to 2011 (see Figure 3), but this has not affected average vehicle speeds in Manhattan or monitored CO concentrations which have decreased over the current period.

Figure 3. New York County Daily Vehicle Miles Traveled



When the EPA proposed to approve New York's 2nd CO maintenance plan on March 25, 2014 (79 FR 16265), the EPA only received comments supporting the proposal. A final rulemaking approving the CO maintenance plan was published on May 30, 2014 (79 FR 31045). Based on the CO maintenance plan, vehicle speeds and VMT in the Manhattan CBD have not shown much change, while vehicle emissions have decreased dramatically.

Therefore, no emission reductions were attributed to this program in the SIP. The reader is reminded that the limited off-street parking program is a limited program implemented by New York City Department of City Planning that applies only in the CBD of Manhattan and applies to new building construction. While this program applies to a portion of only one county, the PM_{2.5} and ozone SIPs cover multiple counties.

Comment: Mr. Gutman commented that the EPA approved the 1979 SIP, which included a “permanent project” of regulating and restricting parking in the CBD of Manhattan. Mr. Gutman further commented that, as a permanent project, continuation of the CBD limited off-street parking program is a key assumption underlying projected traffic estimates incorporated into subsequent ozone and particulate matter SIP revisions. Mr. Gutman stated the EPA should deny New York State’s request to revise the SIP and not approve removal of the limited off-street parking program reference in the SIP.

Response: Mr. Gutman maintains that the limited off-street parking program appears to be discussed as a permanent measure in the SIP. While a number of SIP actions³ have discussed limited off-street parking programs, the EPA disagrees with Mr. Gutman’s interpretation regarding the permanency of such measures.

Mr. Gutman’s comments place emphasis on the “permanency” of measures in the SIP, suggesting that once a measure is approved into the SIP, it perpetually remains in the SIP. However, this is not the case. Section 110 of the CAA generally and section 110(l) specifically allow for the State to revise its SIP over time to add or remove control measures, subject to the condition that doing so does not result in interference with attainment and maintenance of any NAAQS or with any other CAA applicable requirement.⁴ In this action, the EPA is approving New York’s request to remove a reference in the SIP to a limited off-street parking program which the State has not relied on for any associated emissions reductions in any EPA-approved SIP.

3 See, e.g., 44 FR 70754 (Dec. 10, 1979); 45 FR 33981 (May 21, 1980); 45 FR 56369 (Aug. 25, 1980); 46 FR 8477 (Jan. 27, 1981); 67 FR 19337 (April 19, 2002).

4 In addition, section 193 restricts modification of SIP requirements that were in effect before November 15, 1990, by prohibiting such modification in any area which is a nonattainment area for any air pollutant unless the modification insures equivalent or greater emission reduction of such air pollutant.

New York indicated that it has not relied on any emission reductions that may be attributed to the limited off-street parking program measures in any SIP actions.⁵ As discussed in the EPA's April 12, 2013 proposal to approve New York's removal of a reference in the SIP to a limited off-street parking program, CAA section 110(l) states: "The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 [171]), or any other applicable requirement of this Chapter." Section 110(l) allows New York to request that any measure be removed from the SIP as long as the state can demonstrate that removal of the measure complies with this restriction. In fact, section 110(l) would allow a State to remove a program that it clearly identified as a "permanent" control measure, even if the program included associated emission reductions that were credited to the SIP, so long as the State can demonstrate continued attainment and maintenance of any NAAQS and so long as the measure is not required by other provisions of the CAA. For example, New York's portable fuel container program is a SIP-approved, enforceable control measure program with associated emission reductions relied on in the SIP. As important as this program is for New York's continued attainment and maintenance of the NAAQS, New York has the ability to request removal of this program if New York can demonstrate such removal would not interfere under section 110(l). In this example, New York would need to replace the emission reductions associated with the portable fuel container program with other control measures since New York relied on the resulting emission reductions. In contrast, New York cannot replace emission reductions associated with the limited off-street parking program with another control measure, because there is no information demonstrating

⁵ Letter dated Oct. 5, 2012 from J. Martens, DEC, to J. Enck, EPA Region 2, including attachment dated August 2012 "Assessment of Public Comments on the Proposed Amendment to the New York State Implementation Plan: Carbon Monoxide Attainment Demonstration: New York Metropolitan Area, August 2012." See, e.g., Response to Comment 2, 5 and 28.

that the measures ever achieved a reduction in emissions or that the removal of the restrictions would lead to an increase in emissions, and no emission reductions from the limited off-street parking program were ever credited towards attainment of the CO standards. There is no quantifiable emission increase as a result of removing the limited off-street parking program.

Further, the limited off-street parking program's goal was to reduce vehicle entries to the CBD and thereby improve vehicle speeds and lower VMT with the idea that this would ultimately reduce CO emissions from automobiles on the road in the late 1970's and early 1980's. Over the years, VMT has increased and vehicle speeds have been little changed and emission control technology on vehicles has been greatly improved and CO concentrations have decreased dramatically to approximately 20 percent of the NAAQS. This suggests that VMT and vehicle speeds have a negligible effect in the Manhattan CBD but emission control efficiency has a large impact on CO emissions in Manhattan. The other pollutants emitted from automobiles, both in 1990 and 2014, are emitted at rates significantly less than CO and, since vehicle speeds and VMT in the Manhattan CBD have a negligible effect, it is expected that there would be no impact on the other automotive related pollutants. The limited off-street parking program was never included in any other NAAQS SIP. In this action the EPA is approving New York's request to remove a reference in the SIP to a limited off-street parking program that the State has not relied on for any associated emissions reductions.

Comment: Mr. Gutman commented that the New York City Planning Commission has proposed new rules that have a target to increase the number of parking spaces in the City of New York, which he asserts violates the SIP and he asserts, will lead to renewed growth of

traffic, lower traffic speeds and higher emissions than assumed in New York's ozone and PM_{2.5} attainment demonstrations.

Response: The issue of whether New York City or New York State is proposing regulations or statutes that may violate the SIP is separate from the EPA's April 12, 2013, proposal to approve a SIP revision submitted by the State to remove references to the limited off-street parking program in the SIP that apply solely to the Manhattan CBD. If the City of New York or State adopts regulations or statutes that are different than or conflict with requirements currently included in the SIP, the EPA will address those differences when such new rules are submitted by New York State for EPA review and approval into the SIP. In addition, should such rules not be submitted as a SIP revision to the EPA for consideration but get promulgated in conflict with the applicable SIP, the EPA also has the authority to issue a finding of failure to implement the SIP, which would require submittal of a SIP revision.

Mr. Gutman claims that the City of New York's proposed changes to the parking restrictions will violate the SIP because the changes are different than the parking restrictions currently contained in the SIP. However, Mr. Gutman failed to provide any specific references to the traffic levels or emission levels assumed in New York's SIPs. The state can always revise its SIP, consistent with the requirements of the CAA. When submitted as a SIP revision, EPA would be under an obligation to review the SIP revision on its merits and assess how it would affect the applicable SIP and attainment and maintenance of the NAAQS.

Comment: Mr. Gutman commented that since the EPA promulgated a new, more stringent annual NAAQS for PM_{2.5} that also requires that additional monitors be located near roadways, vehicle emissions are likely to be more important in order for areas to meet the new PM_{2.5} annual standard.

Response: EPA agrees that emissions from vehicle-related activities could be important considerations as states develop plans for meeting and maintaining the new PM_{2.5} annual standard. EPA has established procedures, separate from this SIP revision action, which will address attainment of the new PM_{2.5} annual standard and the establishment of near roadway monitors. On December 17, 2014 (80 FR 2206), EPA designated areas of the country as meeting or not meeting the new PM_{2.5} annual standard, with moderate area attainment plans for any nonattainment areas to be submitted by the states to EPA no later than October 15, 2016. New York City was designated attainment/unclassifiable since air quality data from the existing ambient air monitoring network shows the New York Metropolitan Area is currently below the new PM_{2.5} annual standard. As for the new near roadway monitors, states are required to phase-in these monitoring sites beginning in 2015. NYSDEC submitted its 2014 annual network plan, which provides for near roadway PM_{2.5} monitors, and EPA approved the plan in a letter dated November 3, 2014. See Table 1 for the 3-Year design values.

Table 1. Annual Design Value Concentrations for the NY-NJ-CT Nonattainment Area (µg/m³)
(The 2012 annual PM_{2.5} NAAQS is 12.0 µg/m³)

County	AQS Monitor ID	3-Year design values				
		2007- 2009	2008- 2010	2009- 2011	2010- 2012	2011- 2013

NEW YORK:

Bronx.....36-005-0080/0110/0133	13.9	12.5	11.9	9.8	9.6
Kings.....36-047-0122	12.2	10.8	10.3	9.9	9.7
Nassau.....36-059-0008	10.3	9.5	8.9	INC	INC
New York.....36-061-0128/0134	12.1	12.1	11.7	11.8	11.7
Orange.....36-071-0002	9.3	8.5	8.2	8.1	7.8
Queens.....36-081-0124	10.6	10.0	9.4	9.1	8.7
Richmond.....36-085-0055	11.6	10.5	9.8	9.7	9.0
Rockland.....NM	NM	NM	NM	NM	NM
Suffolk.....36-103-0002	9.7	8.9	8.4	8.4	8.1
Westchester....36-119-1002	10.6	9.6	9.1	INC	INC

NEW JERSEY:

Bergen.....34-003-0003	11.3	9.8	9.2	9.2	9.1
Essex.....34-0013-003	INC	INC	INC	9.5	9.4
Hudson.....34-017-2002	13.1	11.6	11.1	11.1	11.1
Mercer.....34-021-0008	10.8	10.0	9.7	9.5	9.4
Middlesex.....34-023-0006	10.4	8.8	7.9	8.0	8.2
Monmouth.....NM	NM	NM	NM	NM	NM
Morris.....34-027-0004	9.6	8.7	8.5	8.4	8.4
Passaic.....34-031-0005	11.3	9.8	9.3	9.3	9.3
Somerset.....NM	NM	NM	NM	NM	NM
Union.....34-039-0006/2003	11.6	10.3	9.6	9.7	9.7

CONNECTICUT:

Fairfield.....09-001-0010	11.3	10.0	9.4	9.4	9.3
New Haven.....09-009-1123	11.4	10.3	9.6	9.4	9.3

INC-- Counties listed as INC did not meet 75 percent data completeness requirement for the relevant time period.

NM-- No monitor located in county.

If new monitoring data demonstrates exceedances of the NAAQS, EPA would work with the State to bring any exceeding areas back into attainment.

Comment: Mr. Gutman commented that the limited off-street parking program is a useful reasonably available control measure or RACM and was so designated in the 1979 [proposed] SIP.

Response: The EPA agrees that the limited off-street parking program may be a RACM to make progress towards attainment of the NAAQS for a specific pollutant(s) depending on location specific factors that can change with time. The State, however, has the flexibility to decide which measures to include in RACM as a requirement of the SIP based on the ability of the measure to improve air quality in the given area and advance the attainment date. The EPA's April 12, 2013, proposed action explained in detail the connection between the limited off-street parking program and RACM. (See 78 FR 21869). As discussed in the EPA's April 12, 2013, proposal, New York could have included the restrictions as a RACM in the subsequent CO SIP actions, but did not (1992, 2002). New York also never included the restrictions as part of any other NAAQS attainment demonstrations. These restrictions were not included because they were not needed to demonstrate RFP or to meet the attainment date. New York's SIP does not rely on any emission reductions associated with the parking restrictions, and all credited emissions reductions are attributed to other control measures in the SIP. New York is thus able to and has demonstrated attainment of the NAAQS without relying on the limited off-street parking program. Therefore the limited off-street parking program is not necessary to meet or accelerate attainment by the attainment date.

Comment: Mr. Gutman commented that the New York City Department of City Planning “has been seeking to jettison” rules, which they had supported in 1982, by proposing in 2004, to rewrite the restrictions for a large development area within the CBD that they called the Hudson Yards.

Response: This comment is not relevant to this SIP action. The EPA is approving New York's request to remove a reference in the SIP to a limited off-street parking program which the State has not relied on for any associated emissions reductions.

Comment: Mr. Gutman’s comments state that the parking program was part of the SIP and reference a May 5, 2009, Court Order, which was submitted along with his comments to support his position.

Response: EPA agrees that the limited off-street parking program is referenced in the SIP, but also acknowledges that there was some confusion concerning its scope. New York State decided to address the issue by formally proposing revisions to the SIP, holding public hearings and requesting public comments. This action is the result of the State formally submitting a SIP revision.

Comment: Mr. Gutman commented that while the CBD parking regulations may need to be updated and modernized, there is no reason to gut their essence in the process, or to remove the program from the SIP, and the EPA should not allow it.

Response: As stated previously, the subject of the EPA's April 12, 2013, proposal is to act on a SIP revision submitted by the State to remove references to the limited off-street parking program in the SIP, based on the EPA's determination that such removal will not interfere with attainment and maintenance of all NAAQS. Once the limited off-street parking program is removed from the SIP, it will no longer be federally enforceable. Removal of the limited off-street parking program from the SIP will not change the program's status under local law. Any future changes to the program would be subject to local administrative procedures and public involvement.

Comment: Mr. Gutman commented that the EPA should clarify whether or not removing the limited off-street parking program from the 1992 CO SIP leaves the program in place as part of the SIP for other pollutants.

Response: The EPA is removing the reference to the limited off-street parking program from the SIP. The EPA's April 12, 2013, proposal focused on CO because when compared to other pollutants emitted from motor vehicles, CO emissions far exceed the others (see figure 1). However, as discussed in previous responses to comments and in the EPA's April 12, 2013 proposal, the EPA considered and evaluated New York's SIP revision request to address all criteria air pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. Regarding the relationship between motor vehicle emissions, pollutant concentrations and activities that would theoretically increase motor vehicle activity, on a grams per mile basis, the mass of increased emissions from additional motor vehicles in an area would be dominated by CO. Therefore, of all the criteria pollutants, CO would be the pollutant most

affected by hypothetical activity that results in overall emissions increases and, as discussed in previous responses to comments, the impact on the area's CO concentrations would be insignificant. Concentrations of all the other criteria pollutants, including ozone and particulate matter, would be affected much less than CO concentrations. By removing the limited off-street parking program references from the CO SIP, the EPA is removing the reference from all of the SIP, and instead relying on New York's more recent SIP revision approvals relating to emission inventories, RACM, attainment demonstrations and maintenance plans for all pollutants.

Comment: The City of New York commented that the EPA's proposed rule will not interfere with attainment or maintenance of the NAAQS in the City of New York.

Response: The EPA agrees. As stated in previous responses, the EPA considered and evaluated New York's SIP revision request to address all criteria air pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. While CO concentrations are the pollutant of most concern in this action, as stated in the April 12, 2013 proposed rule, the EPA considered the impacts of all the criteria pollutants.

Comment: New York City commented that the EPA's proposed rule allows the City of New York to be responsible for its own limited off-street parking program and that it believes that it is free to amend the parking regulations under the current SIP.

Response: The EPA agrees that the finalization of this rule will allow the City of New York to be responsible for the limited off-street parking restriction program in appropriate cases.

However, until the references to the limited off-street parking program are removed from the SIP, the City of New York should continue to coordinate with the State to determine whether any such amendments are consistent with the SIP.

Comment: The City of New York supports the removal of the “outdated” parking controls in the SIP and to remove any confusion or misunderstanding regarding the City of New York's ability to regulate off-street parking.

Response: The EPA agrees with the suggestion that the parking controls discussed in the SIP in the early 1980s could be considered “outdated” in lay terms given the subsequent and more recent SIP revisions submitted by New York and approved by the EPA over the last three decades and the substantial progress which has been achieved in reducing air pollutants. New York has revised various emission inventories, RACMs, attainment demonstrations and maintenance plans at various times since the earlier references to the limited off-street parking program. The New York SIP has not and continues to not rely on the limited off-street parking program as a control measure. However, the rule is not actually “outdated” in a legal sense unless removed from the SIP, as is being done by this action.

III. What is the EPA’s Final Action?

The EPA is approving New York’s request to remove a reference to a limited off-street parking program in New York County from the SIP because this SIP revision will not interfere with attainment or maintenance of any NAAQS and will not interfere with any other CAA applicable

requirements. In addition, New York did not rely on any emission reductions from this program in its SIP modeling to support the demonstration of attainment of the various NAAQS.

The EPA's review of the materials submitted indicates that New York has revised its SIP in accordance with the requirements of the CAA, 40 CFR part 51 and all of the EPA's technical requirements for a SIP revision. Therefore, the EPA is approving the removal of a reference to a limited off-street parking program in New York County from the SIP.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

Dated: June 2, 2015.

Judith A. Enck,
Regional Administrator,
Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart HH--New York

2. In §52.1670, the table in paragraph (e) is amended by adding the entry “Limited off-street parking program” at the end of the table to read as follows:

§52.1670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA approval date	Explanation
* * * * *				
Limited off-street parking program	New York County-Central Business District	10/05/12	[insert the date of publication in the Federal Register] [insert Federal Register citation]	Removing reference to program from SIP

